

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO. ANUHCV2024/0062

In the Matter of the Married Woman's Property Act Cap 267
And
In the Matter of a declaration of interest in property
And
In the Matter of the Partition Act Cap 305
And
In the Matter of severance of property jointly owned

BETWEEN:

ERIKA ROBINSON

Claimant

and

CHARLES ROBINSON

Defendant

Appearances:

Mr. Kendrickson Kentish KC and Ms. Kathleen Bennett of Lake, Kentish & Bennett for the Claimant
Mr. Kemar Roberts of Dentons Delany for the Defendant

2025: April 29th
June 11th (submissions)
June 23rd
July 23rd

ORAL DECISION

Introduction

- [1] **BYER, J.:** Before the Court was an interim application filed on the 27th November, 2024 by the Claimant supported by an affidavit filed on even date. The Claimant also relied on an affidavit filed on the 10th June, 2024 in relation to an application filed for spousal support and an affidavit in reply filed on the 7th March, 2025. The Defendant's sole affidavit evidence was contained in his affidavit in response filed the 7th February, 2025.

- [2] The application of the Claimant sought the following relief i) that the matrimonial home and property situate at Pattersons in the Parish of St. Paul in Antigua and Barbuda and registered and recorded in the land registry as Registration section – South East Block No 56 2282A , Parcel 369 (Parcel 369) in the name of the Defendant be declared to be held in trust by the Defendant for the benefit of the Parties in equal shares on the admission of the Defendant ii) the Parties agree on the appointment of a qualified land appraiser to carry out an independent valuation of the property iii) the co- ownership of the lands set out in Schedule 1 of the statement of claim be severed and the interests therein be divided equally between the parties iv) the Parties agree on the appointment of a qualified land appraiser to carry put an independent valuation of the properties v) that the lands be sold and/or exchanged between the Parties to the extent of their interests and value vi) alternatively the land be sold and the proceeds divided equally between the Parties and vii) the costs of this application be provided for by the Defendant.
- [3] By order of the Court dated the 11th December, 2024 the Court made certain declarations in relation to Parcel 369 and the parcels contained in Schedule 1 of the statement of Claimant in the following terms: Parcel 369 was held on trust by the Defendant for the benefit of the parties in equal shares, with regard to the properties identified in the statement of claim , these were to be held as tenants in common and there was to be no disposition of the same until the final determination of the present application and the Court determined that the extant matters for the Court ,were the determination of the values of the properties and the disposal of the same.
- [4] The parcels in which the Parties held as tenants in common were therefore as follows a) Parcel of land at Pattersons Estate St. Paul Registration section South East Block No. 56 2282A Parcel 163 (Parcel 163) b) Registration section St Philips North Block No. 25 3088 A Parcel 746 (Parcel 746) c) Registration section Falmouth and Bethesda Block No. 343 2682A Parcel 720 (Parcel 720) and d) Registration Section South West Block No. 55 1182A Parcel 333(Parcel 333).
- [5] The further hearing of the application was scheduled for the 29th April, 2025 and on the morning of the trial, the Parties presented the Court with a consent order agreeing on the values to be ascribed to the parcels, namely Parcel 369 \$1,938,500. Parcel 720 \$294,000.00. Parcel 163 \$163,400, Parcel 333 \$229.00.00 and Parcel 746 \$2,230,300.00.
- [6] The Court's only concern was how to dispose of the identified properties, especially Parcel 369— home to the matrimonial residence—which the Claimant wanted as sole owner in exchange for relinquishing her 50% share in the other properties.
- [7] In addressing this issue, the Claimant and the Defendant have approached the function of the Court in this regard from two different perspectives. Counsel for the Claimant has sought to rely on what are the best interests of the minor children, where the Claimant is their admitted primary caretaker. The Claimant asked the Court to consider that Parcel 369 is the only home that the children have ever known and that their preference, as stated by the Claimant in evidence, is that the Claimant remain their primary caretaker in the home on their visits to Antigua. The Claimant emphasized that

the Court must be guided by the best interest of the children and in doing so, it is clear that the Claimant should be given sole ownership of Parcel 369 especially in the circumstances that she is prepared to “pay” the Defendant for his share in the same by forfeiting her right to her shares in the other four jointly owned properties. The Court must pause here to state, that this contention in its present manifestation was first stated at the trial of the matter on the 29th April, 2025 as the specificity of this sought exchange did not form any part of the application as filed.

- [8] The Defendant on the other had submitted to the Court that there is more for the Court to consider than the best interest of the children, in circumstances where it is clear that the retention of Parcel 369 by the Defendant would not adversely affect that best interest, as the intention of the Defendant was at all times to retain the said home for the benefit of his children. In addition, the Defendant asked the Court to consider that where one co-owner leaves a property in the possession of the other co-owner, that any common intention to benefit one or other of the co-owners changes and the initial expectation of how the property should be shared shifts. Further, the Defendant contended that the Claimant having left the Defendant in the home since 2021, voluntarily migrating to the United States of America, where he contends the Claimant has her primary residence, should not now impact the Defendant by removing him from the property which has been his home and especially in circumstances where the Claimant would not be prejudiced by being paid for her share in Parcel 369 and recouping her interests in the other properties once sold.

Court’s Analysis and Considerations

- [9] This Court must state from the outset there can be no dissent from the submissions of the Claimant that in the disposition of property and in particular the matrimonial home where there are minor children involved, that the Court must consider the best interests of the child or children who call that house home. However with that being said, this Court noted the evidence that was laid before this Court by both Parties and although both Parties paid lip service to the platitude that they were only thinking and acting in the interests of the children, this Court could not help but be convinced that the nub of this battle over ownership of the parcels of land and Parcel 329 in particular, was very much about what the Parties wanted as between themselves. I will say no more on that but rely on the sage words of the full court in the Australian case of **Foster v Foster**¹ in relation to custody issues which is just as appropriate here. It is “commonly the case that in custody disputes a Judge says less than he otherwise might about the credit of parties and any adverse impression he may have formed of them. He is aware that the parties have to maintain a relationship into the future because although divorced and separated from each other they remain parents of their children. Where there is a lot of bitterness, strong comments about the character of the Parties [and even evidence] when expressed in a judicial decision can often be used as ammunition in any continuation of the parental war.” I will therefore give no such ammunition.

¹ (1977) FLC 90-281

- [10] That being said, the Court's concern in relation to the disposition of Parcel 369 and by extension the other parcels owned jointly by the Parties, is to strike a balance between the Parties and to ensure as far as it is possible in the circumstances to be fair to both Parties. That is, that the Court must look at these matters in a holistic manner² and must recognize that they are almost entirely fact sensitive. Therefore this Court makes it clear that it accepts all the propositions of law relied upon by the Parties in their submissions but accepts on a balance of probability the following facts i) the Claimant is the primary care giver of the children both the minors and the young adult; ii) the Claimant is clearly willing (since this remains uncontroverted by the defendant) to maintain that position by travelling with the children to Antigua when they visit on their vacations and iii) Parcel 369 has provided that place called home for these children.
- [11] In this Court's mind, it is therefore incumbent on it to take as wide a view as possible in creating a solution and although the exchange of the value of Parcels 720, 746, 163 or 333 for the Claimant's share in Parcel 369 was not mentioned specifically in the application before the Court³, this Court considers that Paragraph 5 of the relief sought seeking that "the lands be sold and/or exchanged between the parties to the extent of their interests and value" is broad enough to allow the court latitude to consider the same.
- [12] Further this Court also considers the wishes of the Defendant to retain Parcel 369 as a means of providing a "forever" home for the children of the family as opposed to the same being disposed of, which is one of the sources of his concern if the same is transferred to the Claimant in her sole right. In the round, therefore, it is well within the powers of this Court⁴ to create an order that encapsulates the wishes of both Parties while protecting the interests of the children to this marriage.
- [13] It is therefore ordered as follows:-
1. Parcels 720, 746, 163 and 333 are to be placed with a reputable real estate agent as agreed by both Parties to be listed for sale at the agreed valuations, within 60 days of today's date. The same are to be sold on the open market. All costs attendant on the completion of the sales shall be deducted from the sale price obtained and the balance is to be distributed to the Parties as declared by this Court by its Order of 11th December, 2024.
 2. The Defendant is to convey Parcel 369 to the Claimant and himself as joint trustees for the benefit of the children of the family until the youngest child shall attain the age of 21 years. Thereafter the joint trustees shall execute a transfer to the three children of the family in equal shares. All costs attendant upon the said transfers shall be borne by the Parties in equal shares. During the currency of the said trust, the Claimant shall have sole and exclusive occupancy and management of the said Parcel 369 and home thereon and shall therefore be solely responsible for its maintenance and upkeep including all utilities.

² **Anne Abbott v Dane Abbott** [2007] UKPC 53

³ As was stated in Paragraph 7 above

⁴ **Mesher v Mesher and Hall** [1980] 1 All ER 126 at page 128 per Davies LJ

3. The said property shall not be sold or otherwise disposed of during the currency of the trust.
4. The Parties shall bear their own costs on the hearing of this application as an indication that this is a matter that should have properly been settled by the Parties as between themselves.

P. Nicola Byer
High Court Judge

By the Court



Registrar